

REMARKS

The Examiner is thanked for the thorough examination of the present application. The Office Action mailed October 1, 2007 rejected claims 1-36. This is a full and timely response to that outstanding Office Action.

I. Present Status of Patent Application

Claims 1-36 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by *Leamon* (U.S. Patent No. 6,970,829). These rejections are respectfully traversed.

II. Examiner Interview

Applicant first wishes to express sincere appreciation for the time that Examiner Al Aubaidi spent with Applicant's representative Benjie Balser during a November 6, 2007 telephone discussion regarding the above-identified Office Action. During the interview, various features described in the patent application and recited in the independent claims, including obtaining call history statistics from a communications switch, and *Leamon* were discussed, and that the outcome of this discussion is addressed herein. Thus, Applicant respectfully requests that Examiner Al Aubaidi carefully consider this response.

III. Rejections Under 35 U.S.C. §102(e)

A. Claims 1-12

The Office Action rejects claims 1-12 under 35 U.S.C. §102(e) as allegedly being anticipated by *Leamon* (U.S. Patent No. 6,970,829). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 1 recites:

1. A workforce planning system, the system comprising:
logic configured to obtain from a communication switch, a first call-history statistic of a first period of time;
logic configured to obtain from a call center, a first work-history statistic of the first period of time;
logic configured to process at least one of the first call-history statistic and the first work-history statistic; and
logic configured to generate a performance report comprising a first past performance statistic.
(Emphasis added).

Applicant respectfully submits that claim 1 is patentably distinct from the cited art for at least the reason that the cited art does not disclose the features emphasized above. For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features of the claim at issue. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 U.S.P.Q.2d 1129 (Fed. Cir. 1988).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Leamon* does not disclose, teach, or suggest at least **logic configured to obtain from a communication switch, a first call-history statistic of a first period of time**. The Office Action alleges that obtaining call-history statistics from a

communication switch is inherent to the disclosure of *Leamon*. However, Applicant respectfully disagrees. The Office Action argues that *Leamon* inherently discloses a communication switch. See Office Action of October 1, 2007, page 2. However, Applicant respectfully submits that it is not inherent that the statistics are obtained from the switch. "Anticipation by inherency requires that 1) the missing descriptive matter be 'necessarily present' in the prior art reference ..." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991). In other words, for something to be inherent to a disclosure, it must be the only way that something can be done – it must be necessarily present. Applicant respectfully submits that instead of obtaining the statistics from the communication switch, the call history statistics could be captured by call-center personnel and entered into a database from which the call-history statistics could be obtained. Therefore, *Leamon* does not anticipate independent claim 1, and the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 1 is allowable over the cited references of record, dependent claims 2-12 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that dependent claims 2-12 contain all the features of independent claim 1. See *Minnesota Mining and Manufacturing Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002); *Jeneric/Pentron, Inc. v. Dillon Co.*, 205 F.3d 1377, 54 U.S.P.Q.2d 1086 (Fed. Cir. 2000); *Wahpeton Canvas Co. v. Frontier Inc.*, 870 F.2d 1546, 10 U.S.P.Q.2d 1201 (Fed. Cir. 1989). Therefore, since dependent claims 2-12 are patentable over *Leamon*, the rejection of claims 2-12 should be withdrawn and the claims allowed.

B. Claims 13-24

The Office Action rejects claims 13-24 under 35 U.S.C. §102(e) as allegedly being anticipated by *Leamon* (U.S. Patent No. 6,970,829). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 13 recites:

13. A method of workforce planning in a workforce management system, the method comprising:

obtaining from a communication switch, a first call-history statistic of a first period of time;

obtaining from a call center, a first work-history statistic of the first period of time;

processing at least one of the first call-history statistic and the first work-history statistic; and

generating a performance report comprising a first past performance statistic.

(Emphasis added).

Applicant respectfully submits that claim 13 is patentably distinct from the cited art for at least the reason that the cited art does not disclose the features emphasized above. For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features of the claim at issue.

Applicant respectfully submits that independent claim 13 is allowable for at least the reason that *Leamon* does not disclose, teach, or suggest at least **obtaining from a communication switch, a first call-history statistic of a first period of time**. The Office Action alleges that obtaining call-history statistics from a communication switch is inherent to the disclosure of *Leamon*. However, Applicant respectfully disagrees. The Office Action argues that *Leamon* inherently discloses a communication switch. See

Office Action of October 1, 2007, page 2. However, Applicant respectfully submits that it is not inherent that the statistics are obtained from the switch. "Anticipation by inherency requires that 1) the missing descriptive matter be 'necessarily present' in the prior art reference ..." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991). In other words, for something to be inherent to a disclosure, it must be the only way that something can be done – it must be necessarily present. Applicant respectfully submits that instead of obtaining the statistics from the communication switch, the call history statistics could be captured by call-center personnel and entered into a database from which the call-history statistics could be obtained. Therefore, *Leamon* does not anticipate independent claim 13, and the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 13 is allowable over the cited references of record, dependent claims 14-24 (which depend from independent claim 13) are allowable as a matter of law for at least the reason that dependent claims 14-24 contain all the features of independent claim 13. Therefore, since dependent claims 14-24 are patentable over *Leamon*, the rejection of claims 14-24 should be withdrawn and the claims allowed.

C. Claims 25-36

The Office Action rejects claims 25-36 under 35 U.S.C. §102(e) as allegedly being anticipated by *Leamon* (U.S. Patent No. 6,970,829). For at least the reasons set forth below, Applicant respectfully traverses the rejection.

Independent claim 25 recites:

25. A workforce planning system stored on a computer-readable medium, the system comprising:

computer-readable code that obtains from a communication switch, a first call-history statistic of a first period of time;

computer-readable code that obtains from a call center, a first work-history statistic of the first period of time;

computer-readable code that processes at least one of the first call-history statistic and the first work-history statistic; and

computer-readable code that generates a performance report comprising a first past performance statistic.

(Emphasis added).

Applicant respectfully submits that claim 25 is patentably distinct from the cited art for at least the reason that the cited art does not disclose the features emphasized above. For a proper rejection of a claim under 35 U.S.C. §102, the cited reference must disclose, teach, or suggest all elements/features of the claim at issue.

Applicant respectfully submits that independent claim 25 is allowable for at least the reason that *Leamon* does not disclose, teach, or suggest at least **computer-readable code that obtains from a communication switch, a first call-history statistic of a first period of time**. The Office Action alleges that obtaining call-history statistics from a communication switch is inherent to the disclosure of *Leamon*. However, Applicant respectfully disagrees. The Office Action argues that *Leamon* inherently discloses a communication switch. See Office Action of October 1, 2007, page 2. However, Applicant respectfully submits that it is not inherent that the statistics are obtained from the switch. "Anticipation by inherency requires that 1) the missing descriptive matter be 'necessarily present' in the prior art reference ..." *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264 (Fed. Cir. 1991). In other words, for something to

be inherent to a disclosure, it must be the only way that something can be done – it must be necessarily present. Applicant respectfully submits that instead of obtaining the statistics from the communication switch, the call history statistics could be captured by call-center personnel and entered into a database from which the call-history statistics could be obtained. Therefore, *Leamon* does not anticipate independent claim 25, and the rejection should be withdrawn for at least that reason.

For at least the reason that independent claim 25 is allowable over the cited references of record, dependent claims 26-36 (which depend from independent claim 25) are allowable as a matter of law for at least the reason that dependent claims 26-36 contain all the features of independent claim 25. Therefore, since dependent claims 26-36 are patentable over *Leamon*, the rejection of claims 26-36 should be withdrawn and the claims allowed.

IV. Miscellaneous Issues

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

CONCLUSION

For at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-36 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

It is believed that no extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to deposit account No. 20-0778.

Respectfully submitted,

/BAB/

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